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In re Application of
Fukomoto et al.
Application No. 10/777,106
Filed: February 13, 2004
Attorney Docket No. 01198.0276-02

**OFFICE OF PETITIONS
ON PETITION**

This is a decision in response to the paper entitled "Response to Notice of Incomplete Nonprovisional Application" filed July 7, 2004, which is being treated as a petition to accord the above-identified application a filing date of February 13, 2004.

On February 13, 2004, the application was filed.

On May 7, 2004, the Office of Initial Patent Examination mailed a Notice stating in part that drawings were missing and that a filing date would be accorded upon receipt of drawings.

In response, the present petition alleges that identical drawings were included as part of application no. 10/253,533 which was incorporated by reference,

The Office allows an applicant to rely upon an incorporation by reference when a portion of the child application has been inadvertently omitted.

Based on the incorporation by reference, it appears that the drawings were present in the Office on February 13, 2004, albeit in the file of another application. ']

In view of the above, the petition is **granted**. The copy of the drawings submitted with the petition will be used for examination purposes.

A petition fee will be charged to petitioner's deposit account because petitioner has failed to establish drawings accompanied the application papers. The last portion of MPEP 513 states,

Where there is a dispute as to the contents of correspondence submitted to the Office (e.g., an applicant asserts that three sheets of drawings were submitted under 37 CFR 1.10 with an application, but the Office records indicate receipt of only two sheets of drawings with the application) ... The Office will rely upon its official record of the contents of such correspondence in absence of convincing evidence (e.g. a postcard receipt

Although a postcard receipt has been submitted, the postcard is not properly itemized. See MPEP 503.

The Office of Initial Patent Examination will be informed of the instant decision and will process the application with a filing date of February 13, 2004, using the papers filed on that date along with the drawings filed on July 7, 2004.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

A handwritten signature in black ink, appearing to read 'C. Brantley', is positioned above the printed name.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions